

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

DECEMBER SESSION, 1999

FILED

February 25, 2000

Cecil Crowson, Jr.
Appellate Court Clerk

TERRY LAMAR BYRD,)

Appellant,)

VS.)

STATE OF TENNESSEE,)

Appellee.)

C.C.A. NO. 03C01-9905-CR-00199

HAMILTON COUNTY

HON. DOUGLAS A. MEYER,
JUDGE

(Post-Conviction)

FOR THE APPELLANT:

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OPINION FILED _____

AFFIRMED

DAVID H. WELLES, JUDGE

OPINION

The Petitioner, Terry Lamar Byrd, appeals as of right the dismissal of his post-conviction petition after an evidentiary hearing to determine whether the petition was time-barred. He raises only one issue on appeal: whether the application of the statute of limitations to bar the instant petition violates the Petitioner's due process guarantees because the Petitioner was mentally incompetent. We affirm the judgment of the trial court.

The Petitioner was originally indicted in 1992 for attempted first degree murder and attempted aggravated robbery. After initially being found incompetent to stand trial by Johnson Mental Health Center, the Petitioner was later found competent to stand trial by Moccasin Bend Mental Health Institute. On May 27, 1994, the Petitioner entered guilty pleas to the crimes charged and received an effective sentence of fifteen years. Before accepting the Petitioner's guilty pleas, the trial court questioned the Petitioner about his understanding of his rights. The court then made the following findings:

The Court finds that Terry Lamar Byrd is freely and voluntarily of his own accord knowingly waiving his right to trial by jury and entering pleas of guilty. The Court further finds there's a factual basis for a finding of guilt in each case. The Court further finds that Mr. Byrd is competent to stand trial, that he does understand his alternatives between going to trial or accepting this plea, and that he is capable of making that decision himself.

On August 28, 1997, the Petitioner filed a pro se petition for post-conviction relief. The trial court appointed counsel, who filed an amended petition alleging ineffective assistance of counsel with respect to the Petitioner's guilty pleas. The State responded that the petition was time-barred due to the expiration of the statute of limitations. On November 30, 1998, the trial court conducted an evidentiary hearing to determine whether the statute of limitations was tolled due to the Petitioner's mental incompetence during the period of time between the entry of his guilty pleas and the filing of the petition. The court then entered an

order on March 31, 1999 denying the petition for post-conviction relief after finding the following: (1) that the Petitioner's testimony at the evidentiary hearing on November 30, 1998 indicated that, although he had a low I.Q., he was correctly oriented as to time and place; and (2) that the Petitioner displayed a knowledge of the judicial process. The court concluded, "Based on Byrd's testimony at the evidentiary hearing, the pro se pleadings, and his letters to the court, I find that he was not incompetent between 1994 and 1998, and that the statute of limitations was not tolled."

Relief under our Post-Conviction Procedure Act is available when the conviction or sentence is void or voidable because of the abridgement of any right guaranteed by either the Tennessee Constitution or the United States Constitution. Tenn. Code Ann. § 40-30-203. However, petitions for post-conviction relief must be filed within one year of the date of the final action of the highest appellate court to which an appeal is taken, or if no appeal is taken, within one year of the date on which the judgment became final. Id. § 40-30-202(a). If the petition is not filed within that time period, consideration of the petition is barred. Id. The Act specifically states that the "statute of limitations shall not be tolled for any reason, including any tolling or saving provision otherwise available at law or equity." Id. Although it provides for a few limited exceptions to this rule, those exceptions do not include mental incompetence. See id. § 40-30-202(b).

Notwithstanding, this Court has held that due process mandates the tolling of the statute of limitations under our current Post-Conviction Procedure Act during periods of mental incompetence. See Vikki Lynn Spellman v. State, C.C.A. No. 02C01-9801-CC-0036, 1998 WL 517840, at *2 (Tenn. Crim. App., Jackson, Aug. 21, 1998), perm. to appeal granted (Tenn., Mar. 15, 1999); John Paul Seals v. State, C.C.A. No. 03C01-9802-CC-00050, 1999 WL 2833, at *2 (Tenn. Crim. App., Knoxville, Jan. 6, 1999), perm. to appeal granted (Tenn., July

12, 1999); State v. Ralph Dean Purkey, C.C.A. No. 03C01-9902-CC-00082, 1999 WL 1206818, at *2 (Tenn. Crim. App., Knoxville, Dec. 17, 1999). Our prior decisions are based in part on the supreme court's opinion in Watkins v. State, 903 S.W.2d 302 (Tenn. 1995). Watkins arose under the previous post-conviction statute which contained a three-year statute of limitations period and which did not contain a provision prohibiting the tolling of the statute of limitations period for any reason. See generally Tenn. Code Ann. § 40-30-101 to -124 (repealed 1995). The supreme court held that the general savings statute operated to toll the statute of limitations due to mental incompetence and that due process would be violated if the statute of limitations was applied in cases of mental incompetence. Watkins, 903 S.W.2d at 305-06; see Tenn. Code Ann. § 28-1-106 (general savings statute). We agree with the State that the anti-tolling provision in the current Post-Conviction Procedure Act nullifies the application of the general savings statute, but we recognize that due process guarantees are applicable. In Watkins, the supreme court stated, "Even in the absence of a statute tolling the statute of limitations, application of the statute of limitations to the facts of this case would violate constitutional due process." Id. It explained,

Even though the petitioner's interest is not a fundamental right entitled to heightened due process protection, because a petitioner who was incompetent throughout the limitations period would be denied the opportunity to challenge his conviction in a meaningful manner, the failure to toll the limitations period would deny such a petitioner a fair and reasonable opportunity for the bringing of the petition, and thus, would violate due process.

Id. at 307. This same due process analysis remains applicable today, even under the new Post-Conviction Procedure Act. See Spellman, 1998 WL 517840, at *2; Seals, 1999 WL 2833, at *2.

Although we hold that due process requires the tolling of the statute of limitations during periods of mental incompetency, we also conclude that the Petitioner in the instant case failed to establish that he was mentally incompetent. As this Court recently noted, "mental incompetence" for tolling purposes does not equate with "mental illness". State v. Ralph Dean Purkey, No. 03C01-9902-CC-

00082, 1999 WL 1206818, at *3 (Tenn. Crim. App., Knoxville, Dec. 17, 1999). Mental incompetence denotes the inability to manage one's personal affairs or to understand one's legal rights and circumstances. Id.

After an evidentiary hearing, the trial court found that the petitioner was competent during the period of time between his guilty pleas and the filing of the post-conviction petition; thus the petition was barred by the statute of limitations. At the hearing, the Petitioner presented evidence showing that he was incarcerated at the Lois Deberry Special Needs Facility, that he had a very low I.Q., that he was taking medication, and that he slept frequently. He testified at first that he had been living with his uncle in Chattanooga, but then he stated that he had been “locked up” since 1992. He was aware of the current year. He said he pled guilty to the charges in 1994 “just to get the case over with.” He insisted that he personally wrote several letters to the judge asking the judge to grant him a new trial, but he conceded that other inmates helped him with spelling. Conversely, Tina Walters, an employee of the Public Defender’s Office, testified that she accompanied the Petitioner’s counsel when counsel interviewed the Petitioner and that the Petitioner was unable to accurately write down his family’s address. Ms. Walters offered the opinion that the Petitioner would have been unable to write the letters to the judge by himself. She said that the Petitioner did not understand directions very well and that “his responses were more like that of a seven-year-old child than of an adult.” She indicated that the Petitioner did not understand the things that he and counsel discussed during the interview.

The trial court specifically found that the Petitioner was competent, and the evidence does not preponderate against this finding. The findings of fact made by the trial court are conclusive on appeal unless the evidence preponderates otherwise. Tidwell v. State, 922 S.W.2d 497, 500 (Tenn. 1996); Cooper v. State, 849 S.W.2d 744, 746 (Tenn. 1993). Based on our review of this evidence, we agree that the Petitioner failed to meet his burden of proving that he was mentally

incompetent between 1994 and 1997. Accordingly, we conclude that the statute of limitations bars the Petitioner's post-conviction petition because the statute of limitations was not tolled due to mental incompetence. The judgment of the trial court is affirmed.

DAVID H. WELLES, JUDGE

CONCUR:

JOSEPH M. TIPTON, JUDGE

JERRY L. SMITH, JUDGE